



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
John Lee, Associate Member

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 07-18

APPLICANT

Dedham Auto Mall

LOCATION OF PROPERTY INVOLVED

623 Boston Providence Highway
Walpole Assessors Map 36, Parcel 29

APPLICATION

A SPECIAL PERMIT request under Section 13 to amend an existing Site Plan Approval (1983) to increase the maximum parking to 100 vehicles with 94 vehicles for storage under existing conditions and to increase the maximum allowed parking spaces to 160 spaces with 154 spaces for vehicle storage with the proposed building renovation.

On April 04, 2018 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Vice Chair
Robert Fitzgerald, Clerk
Susanne Murphy, Member
John Lee, Associate Member

VOTE OF THE BOARD:

Prior to the vote of the Board, the applicant withdrew their request (without prejudice) to increase the number of parking spaces to 160 and the proposed building renovations. A motion was then made by Mr. Hiltz and seconded by Mr. Zuker, that the Board modify Special Permit and a Site Plan Review approval #12-83 (March 24, 1983) to increase the previously approved 60 storage spaces for vehicles to 100 spaces as shown on a Preliminary Site Plan (C-1.0) entitled, "*Dedham Auto Mall, Building Renovation, 623 Boston-Providence Highway, Walpole, MA*" dated October 10, 2017, drawn by Level Design Group, 249 South Street, Unit 1, Plainville, MA 02762.

The vote was 5-0-0 in favor (Zuker, Hiltz, Fitzgerald, Murphy and Lee voting). Therefore, modifications to the Special Permit and Site Plan Review Approval are hereby granted, subject to the following conditions:

1. If the Applicant desires to make further changes/modification to the site, it shall apply to the authorized Board.
2. A final "As-Built" of the changes approved herein shall be submitted to the Town.

REASONS FOR DECISION

The Board noted that in 1983 a Special Permit was granted by the Zoning Board of Appeals (ZBA) in decision 12-83 (March 24, 1983) to authorize the "*outside display of goods in excess of 25 percent of the lot area*" and Site Plan Review approval was granted to "*authorize the establishment of a new use, i.e. the sales of motor vehicles*". (Note: The ZBA was the Site Plan Review permitting authority at that time where the Planning Board is now responsible for such petitions.) The '*outside storage use*' is now allowed by right in the HB District. Condition #3 of the 1983 Site Plan approval limited the maximum number of cars on the locus to 60.

The Petitioner is looking to increase the number of stored vehicles to 100 and to bring the site into compliance. The Petitioner met with the Planning Board to modify the Site Plan Review decision and was asked to return to the ZBA as the original permit granting authority. The Board determined that it retained the authority to amend that 1983 decision. Although the use is now allowed by right, it hereby modifies the Special Permit and amends the Site Plan Review approval.

FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds that the requested increase in vehicular storage from 60 to 100 parking spaces (94 spaces for storage, 5 spaces for employees and one (1) handicapped space) complies with all of the criteria of By-Law as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the addition of 34 new spaces on the Locus will have no impact on the traffic on Route One or the neighborhood – which is comprised of commercial uses. There will be no pedestrians associated with this change. Accordingly, there is no adverse effect to the immediate neighborhood if the request is granted. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the increased in the number vehicles stored on the site will not have a negative impact on nearby residents. The additional parked vehicles will not generate new customers or visitors or measurable impacts in vehicle trips to and from the locus. The Proposal will not have a negative impact on traffic or pedestrian safety and this criterion is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that the proposed development conforms to all dimensional regulations of the Walpole Zoning By-Law. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the Proposal for an increase in the number of parking spaces will not generate any hazard (i.e. fire or explosion) or waste. Therefore, there is no danger to the immediate neighborhood through fire, explosion, emission of wastes, or other causes. Accordingly, this criterion is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the additional forty (40) open-air parking spaces will not create any vibration, dust, heat, smoke, glare or other nuisance. The vehicles will be stored and moved on an as-needed basis. Other than employees and visitors, there are no daily fumes or noises being generated. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The immediate neighborhood along this portion of Route One consists predominantly of commercial uses and businesses with significant off-street parking lots. The use is allowed “by-right”. Therefore, the Board finds the proposed extension of the parking area is in harmony with the Highway Business District and this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the

purpose of the zoning district in which the premises is located.

As noted above, the Board finds the proposed extension of the parking area is in harmony with the uses allowed in the Highway Business District. Thus, the Proposal is compatible with the by-laws. Accordingly, this condition is satisfied.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permits are granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: *"...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."*

Massachusetts General Laws c. 40A, §11 provides in part as follows: *"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."*

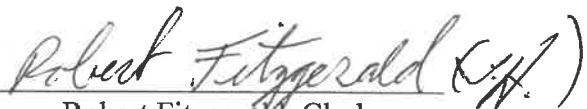
Massachusetts General Laws c. 40A, s. 11 provides in pertinent part as follows:

"...No Variance or Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied,

is recorded at the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY (20) DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Engineering
Planning Board
Board of Selectmen
Building Inspector
Conservation Commission

This decision was made on April 04, 2018 and filed with the Town Clerk on April 17, 2018.